

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

INCREDIBLY EDIBLE DELITES, INC., and  
INCREDIBLE FRANCHISE CORPORATION,

Plaintiffs,

VS.

Civil Action No.:02-CV-4021

EDIBLE ARRANGEMENTS, LLC, and  
EDIBLE ARRANGEMENTS FRANCHISE GROUP

Defendants.

## **PRELIMINARY INJUNCTION ORDER**

Upon due consideration of the Complaint, Memorandum of Law and supporting Declaration and exhibits submit herewith, and under the provisions of Fed.R.Civ.P.65,

And it appearing to the Court that plaintiffs, Incredibly Edible Delites, Inc. and Incredibly Franchise Corporation (collectively Incredibly Edible ), are the owners of valid rights in and to the trademarks/service marks FRUIT FLOWERS, FRUITFLOWERS.COM, and FRUITFLOWERS (the FRUITFLOWERS marks), and the marks INCREDIBLY EDIBLE DELITES and INCREDIBLY EDIBLE DELITES, INC. EDIBLE FLORAL CREATIONS and design, for use in connection with floral fruit bouquets, delivery services, and franchise sales and services, including ownership of federal trademark Registration No. 1,755,554 for the mark INCREDIBLY EDIBLE DELITES, INC. EDIBLE FLORAL CREATIONS and design for floral fruit and vegetable baskets consisting of cut or sliced fruits and vegetables , and that defendants are advertising, selling, and intend to continue to advertise and sell floral fruit bouquets, and/or delivery services and/or franchise sales and services using the FRUITFLOWERS marks and/or

INCREDIBLY EDIBLE marks in connection therewith without authorization from Incredibly Edible; and

And it appearing to the Court that defendants are using the term fruitflowers generically in connection with their floral fruit bouquets, delivery services, and franchise sales and services in a manner which dilutes Incredibly Edible s FRUITFLOWERS marks and INCREDIBLY EDIBLE marks;

And it appearing to the Court that defendants activity constitute trademark infringement under the Lanham Act and at common law, constitute false description or designation under the Lanham Act, dilute the distinctive qualities of Incredibly Edible s trademark in violation of the Lanham Act and the Pennsylvania AntiDilution Statute, and constitute a violation of the AntiCybersquatting Act, and that unless defendants are enjoined from the unauthorized use of the FRUITFLOWERS marks and INCREDIBLY EDIBLE marks, and other confusingly similar variations thereof, Incredibly Edible will suffer immediate and irreparable injury and harm;

IT IS HEREBY ORDERED that defendants, Edible Arrangements, LLC and Edible Arrangements Franchise Group, their respective agents, servants, employees, representatives, attorneys, and any of their successors and assigns and all persons, firms, and corporations including subsidiaries and related companies, acting in concert with said defendants be and the same hereby are preliminary enjoined from doing, aiding, causing or abetting any of the following:

1. Using on the goods/services, or in the sale, offering for sale, promoting, advertising, marketing and distributing of any goods/services, the FRUITFLOWERS marks, and/or INCREDIBLY EDIBLE marks or any other name which simulates or imitates or is

confusingly similar to Incredibly Edible® FRUITFLOWERS marks, and/or INCREDIBLY EDIBLE marks, in such a manner as to deceive or attempt to deceive or falsely describe or represent the source of Edible Arrangements® goods/services, or otherwise create confusion among the purchasing public or the trade as to the source of origin of such goods/services; and,

2. Directly or indirectly engaging in any acts or activities calculated to trade upon Incredibly Edible® FRUITFLOWERS marks, and/or INCREDIBLY EDIBLE marks, or the reputation or goodwill of Incredibly Edible, or in any manner to compete with Incredibly Edible unfairly;
3. Directly or indirectly falsely designating the origin of or falsely describing or representing Edible Arrangements® goods/services as originating from or being connected with Incredibly Edible;
4. Directly or indirectly using in Edible Arrangements® advertising, signs, marketing and promotional materials, or in any way, a name confusingly similar to the FRUITFLOWERS marks, and/or INCREDIBLY EDIBLE marks;
5. Using the designation fruit flowers fruitflowers and/or fruitflowers.com as a metatag, hyperlink, portal Keyword, domain name, or other item associated with the defendants Web sites including [www.ediblearrangements.com](http://www.ediblearrangements.com) or [www.deliciousdesigns.com](http://www.deliciousdesigns.com), or in any manner in connection with defendant s Web sites.
6. Using the domain name fruitflower.com ;
7. Publishing, circulating, distributing, selling, merchandising or using in any manner any labels, signs, prints, boxes, packages, wrappers, receptacles, advertising, posters,

circulars, brochures, handbills, catalogs, publicity releases, magazines, stationery, newspaper, booklets, books, pamphlets, photographs, films, audio recordings, video recordings, T-shirts, any other items in the possession and/or control of any of the defendants containing the designation FRUIT FLOWERS and/or

FRUITFLOWERS.COM and/or FRUITFLOWERS and/or INCREDIBLY EDIBLE DELITES and/or INCREDIBLE DELITES, INC. EDIBLE FLORAL CREATIONS AND DESIGN , or any other designation which is a colorable imitation of Incredibly Edible s FRUITFLOWERS marks and/or INCREDIBLY EDIBLE marks;

AND IT IS FURTHER ORDERED that:

8. Edible Arrangements be directed to deliver up for destruction all goods, signs, prints, pamphlets, brochures, advertisements and other written or printed material in the possession or control of Edible Arrangements which bear the FRUITFLOWERS marks, and/or INCREDIBLY EDIBLE marks in any manner, or which bear a name or mark that is a colorable imitation of Incredibly Edible s FRUITFLOWERS marks, and/or INCREDIBLY EDIBLE marks, and all patterns, plates, molds, matrices, and other means of making the aforesaid written or printed material.
9. Edible Arrangements shall, within 24 hours of service of this Order on Edible Arrangements, terminate all associations with the RealNames Corporation Internet Keyword "fruitflowers" and any Web site domain name or other connection with Edible Arrangements, and shall provide written confirmation to Plaintiffs that this has been done.
10. Edible Arrangements shall, within 24 hours of service of this Order on Edible

Arrangements, remove the following words from the HTML source code, including, without limitation, metatags and/or keywords, of the Edible Arrangements, Web site:

~~Incredible~~, ~~Edible~~, ~~Delite~~, ~~Delights~~, ~~Fruit~~, ~~Flowers~~, ~~Fruitflowers~~, ~~Fruit Flowers~~ and ~~Edible Delight~~

11. Edible Arrangements be directed to file with the Court and serve upon Plaintiffs, within thirty (30) days after the service on Edible Arrangements of the injunctive relief prayed for in paragraphs 1-10 above, a report in writing, under oath, setting forth in detail the manner and form in which Edible Arrangements have complied with the injunction.

This Preliminary Injunction Order shall become effective upon Incredibly Edible's filing with the Clerk of this Court and undertaking in the form of a bond, certified check or certificate of deposit from Incredibly Edible or its attorney in the amount of \$\_\_\_\_\_.

SO ORDERED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Edmund V. Ludwig  
U.S. District Judge